



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **200651037**
Release Date: 12/22/06
Date: September 28, 2006

Contact Person:

Identification Number:

UIL No.
501.03-00
501.36-04

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear _____ :

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. The proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: May 3, 2006

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL No.
501.03-00
501.36-04

Legend:

W =
X =
Y =
Z =
ZZ =

Dear _____ :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

FACTS

You were formed on W as a non-profit corporation under the laws of the State of X to operate for charitable purposes. Your mission, as stated in Article Three of your Articles of Incorporation, is as follows:

The specific purpose for which this corporation is organized is for the Benefit of the Public by accepting donations, selling donations and dispersing the funds to the charity of the donor's choice.

Your bylaws, Art. 2, Sec. 1, state your primary activities as follows:

The primary objectives and purposes of this corporation shall be: to provide assistance to charitable organizations by collecting and selling donations and then distributing the funds to the varies (sic) charities as designated by the donor.

Your website, www.Z.org, describes your activities as follows:

Welcome to a new concept in donating with fast, efficient and reliable pick up. You send us pictures and/or a description of your working donation. We sell the item(s) and donate the money to the charity of your choice. It's a win/win situation. You will have your item(s) picked up free of charge. The buyer will receive your item(s). The charity you choose will benefit from your generous donation.

You will operate a website, www.Z.org, for the general public to sell items of personal property (except automobiles) and you will donate the net proceeds to the charity of their choice. You will sell these items for these individuals on the internet, via the commercial Y website. You will then pay, on behalf of the donor, the net sales proceeds (after deducting your costs of operation) to the charity the donor has selected. You will never actually receive physical possession of these items. Instead, the buyer of the items will coordinate with the donor on how to pick up the items. Under your program, only charities which are exempt under section 501(c)(3) of the Code will be available to the donor for selection.

You will have three employees, who are also your officers and members of your Board of Directors ("Board"), working on your website and your operations. All of these individuals currently work full-time for ZZ, a for-profit internet business that carries on the same activities as you do.

LAW

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, or educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a

private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

A cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under section 501(c)(3) of the Code. The gallery is engaged in selling only the works of its members, and serves the private purposes of its members by selling their works for profit. Rev. Rul. 71-395, 1971-2 C.B. 228.

A nonprofit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than customary commercial charges and not sufficient to cover the cost of operating the gallery, does not qualify for exemption under section 501(c)(3) of the Code. Rev. Rul. 76-152, 1976-1 C.B. 152.

A nonprofit organization whose primary activity is the offering of free legal services for personal tax and estate planning to individuals who wish to make current and deferred gifts to charity as part of their overall tax and estate planning does not qualify for exemption under section 501(c)(3) of the Code. Rev. Rul. 76-442, 1976-2 C.B. 148.

In Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978), an organization was formed as a nonprofit corporation to assist charitable organizations in their fundraising activities with individual contributors. The organization engaged in a service which provided financial planning advice on charitable giving and tax planning to wealthy individuals referred to it by subscribing charitable organizations. The court held that the organization's tax planning services are a nonexempt activity that is substantial in nature and not incidental to its charitable purpose. Therefore, the organization failed to qualify for exemption under section 501(c)(3) of the Code.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court held that an organization did not qualify for exemption under section 501(c)(3) of the Code because it was primarily engaged in an activity that was characteristic of a trade or business and ordinarily carried on by for-profit commercial businesses.

In Easter House v. U.S., 12 Cl. Ct. 476 (1987), aff'd in an unpub. opinion, 846 F.2d 78 (Fed. Cir. 1988), cert. den., 488 U.S. 907 (1988), the organization, in exchange for a fee, provided adoption services to parents seeking to adopt a child, including services to pregnant women who intended to place their newborns for adoption. These fees were the organization's sole source of income. The Claims Court concluded that the organization's business purpose of operating an adoption service, not the advancement of educational and charitable activities, was its primary goal. It competed with other commercial organizations providing similar services. Thus, "[p]laintiff's competition provides its activities with a commercial hue." 12 Cl. Ct. at 486. Accordingly, the organization did not qualify for exemption under section 501(c)(3) of the Code.

In Airlie Foundation v. I.R.S., 283 F. Supp. 2d 58 (D. D.C. 2003), the District Court found that that the organization was formed principally to organize, host, conduct and sponsor educational and other charitable functions on its facilities. The organization's patrons were not limited to tax-exempt entities, but included patrons of a private and corporate nature. The organization paid significant advertising and promotional expenses and derived substantial income from weddings and special events held at its conference center. The court determined that the organization's activities competed with a number of commercial, as well as non-commercial entities, which strongly evidenced a commercial nature and purpose. The court concluded that although the organization carried out a number of charitable and educational activities, these were incidental to its primary activity of operating a for-profit conference center.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the court concluded that when an organization operates for the benefit of private interests, it does not operate exclusively for exempt purposes. Prohibited private benefits may include an "advantage, profit, fruit; privilege; gain; [or] interest." Occasional economic benefits flowing to persons as an incidental consequence of an organization pursuing exempt charitable purposes will not generally constitute prohibited private benefits. Thus, should the organization be shown to benefit private interests more than incidentally, it will be deemed to further a nonexempt purpose under section 1.501(c)(3)-1(d)(1)(ii) of the regulations. This nonexempt purpose will prevent the organization from operating primarily for exempt purposes absent a showing that no more than an insubstantial part of its activities furthers a private interest or any other nonexempt purpose.

RATIONALE

Based on an analysis of all of the facts and circumstances, we conclude that you are not operated exclusively for exempt purposes as required by sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1) of the regulations. Your primary activity is operating a website that offers the general public a way to facilitate donating all types of personal property (except automobiles) which you will then offer to sell on the internet, via the commercial Y website, and donate those proceeds to a charity selected by the donor. By arranging for the receipt of the donated property from the donor, the sale of the property, the delivery of the property to the buyer and the payment of the proceeds to the charity selected by the donor, you are performing services for the donor as the donor's agent. Thus, your primary purpose is to provide personal services for individual donors, which are characteristic of a trade or business and ordinarily carried on by for-profit commercial businesses. See B.S.W. Group, Inc. v. Commissioner, *supra*. See also Easter House v. U.S., *supra*; and Airlie Foundation v. I.R.S., *supra*. The presence of this substantial, single, non-exempt purpose prevents you from qualifying for exemption. See Better Business Bureau of Washington, D.C. v. U.S., *supra*.

Further, by providing personal services for individual donors, you operate primarily for the benefit of these individuals, similar to the organizations in Rev. Rul. 76-442, *supra*, and in Christian Stewardship Assistance, Inc., *supra*. Thus, you are operating primarily for the private interests of the individual donors, not a public purpose, as required in section 1.501(c)(3)-1(d)(1)(ii) of the regulations. See American Campaign Academy v. Commissioner, *supra*.

In addition, your activities, which are virtually identical to the activities your employees perform for their for-profit employer, enable your officers and employees to operate a business for their

own private benefit, similar to the organizations in Rev. Rul. 71-395, supra, and Rev. Rul. 76-152, supra.

CONCLUSION

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
SE:T:EO:RA:T:1
Bruce Lewis/ 3E5
1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements